

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF EMPIRE STATE CARPENTERS
ANNUITY, APPRENTICESHIP, LABOR-
MANAGEMENT COOPERATION, PENSION
AND WELFARE FUNDS,

Petitioners,

ORDER

15-CV-2763 (JMA) (SIL)

-against-

**FILED
CLERK**

RUSH CONCRETE CORP.,

11/14/2018 3:32 pm

Respondent.

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

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AZRACK, United States District Judge:

In February 2015, Petitioners Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Management Cooperation, Pension and Welfare Funds obtained an arbitration award against Respondent Rush Concrete in the amount of \$52,121.51 for unpaid contributions and related damages. When Rush failed to pay any portion of this award, Petitioners filed the instant suit seeking to confirm and enforce the arbitration award pursuant to § 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), § 301 of the Labor Management Relations Act of 1947 (“LMRA”), and § 9 of the Federal Arbitration Act (“FAA”). (Petition, ECF No. 1.) The parties engaged in discovery and the Court subsequently granted Petitioners’ motion for summary judgment, confirming the arbitration award in the amount of \$52,121.51. (ECF Nos. 27, 31.) Now pending before the Court is Petitioners’ unopposed Motion for Fee Approval. (ECF Nos. 31-33.)

Petitioners ask the Court to award \$18,627.50 in attorneys’ fees and \$568.97 in litigation costs incurred in bringing this action to enforce the underlying arbitration award. (*Id.*) Respondent has not opposed this motion.

Petitioners are entitled to recover attorneys' fees and costs incurred litigating this action pursuant to the underlying arbitration award and under section 502(g)(2) of ERISA. See Petition ¶¶ 22, 26, Ex. E; 29 U.S.C. § 121(g)(2). In determining a reasonable attorneys' fees award, both the Supreme Court and Second Circuit "have held that the lodestar—the product of a reasonable hourly rate and the reasonable number of hours required by the case—creates a presumptively reasonable fee." Millea v. Metro-North R.R. Co., 658 F.3d 154, 166 (2d Cir. 2011) (internal quotation omitted). Such "[a] reasonable [hourly] rate is the rate that a reasonable, paying client would be willing to pay." Barrella v. Vill. of Freeport, 43 F. Supp. 3d 136, 189 (E.D.N.Y. 2014) (internal quotation omitted). "[A] district court should generally use the prevailing hourly rates in the district where it sits." Joseph v. HDMJ Rest., Inc., 970 F. Supp. 2d 131, 155 (E.D.N.Y. 2013).

The Motion for Fee Approval includes the contemporaneous billing records for Petitioners' counsel, Virginia & Ambinder, LLP ("V&A"), reflecting the attorneys' fees and litigation costs incurred in litigating this action. (Marimon Decl., Ex. 1, ECF No. 33-1.) The records indicate that V&A spent 86.2 hours litigating this matter, and billed partners and "Of Counsel" attorneys at a rate of \$300 per hour, associates at a rate of \$225 per hour, and legal assistants at a rate of \$100 per hour. (Marimon Decl. ¶¶ 13-21, Ex. 1.) V&A also spent \$568.97 in litigation costs and expenses. (Id. ¶ 22, Ex. 1.)

The Court has reviewed the billing records and finds the attorneys' fees and litigation costs detailed therein to be reasonable. See Ferrara v. CMR Contracting LLC, 848 F. Supp. 2d 304, 313 (E.D.N.Y. 2012) ("In recent years, courts in this district have approved hourly fee rates in the range of \$200 to \$450 for partners, \$100 to \$300 for associates and \$70 to \$100 for paralegal assistants."); see also Trs. of Empire State Carpenters Annuity v. Pisgah Builders, Inc., No. 15-CV-2547, 2016 WL 8711353, at *5 (E.D.N.Y. June 23, 2016) (approving V&A's hourly billing rates of \$300 for "Of Counsel" attorney, \$225 for associate, and \$100 for legal assistants, together with

\$547.87 in litigation costs), report and recommendation adopted 2016 WL 8711345 (E.D.N.Y. Sept. 30, 2016).

Accordingly, the Court awards Petitioners \$18,627.50 in attorneys' fees together with \$568.97 in litigation costs incurred in bringing this action. The Clerk of Court is respectfully directed to enter judgment against Respondent and close the case.

SO ORDERED.

Dated: November 14, 2018
Central Islip, New York

/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE